

Remarks

The present paper is submitted in response to an Office Action dated July 29, 2003. In the Office Action, the Examiner rejected claims 1 and 11 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2, as it depends from claim 1, of U.S. Patent No. 6,443,166. In addition, claims 1 and 11 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending U.S. Patent Application No. 09/689,150.

With respect to the rejection of claims 1 and 11 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2, as it depends from claim 1, of U.S. Patent No. 6,443,166, Applicants respectfully submit that the attached terminal disclaimer should overcome the rejection thereto.

In addition, with respect to the provisional rejection of claims 1 and 11 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending U.S. Patent Application No. 09/689,150, Applicants respectfully submit that U.S. Patent Application No. 09/689,150 has issued as U.S. Patent No. 6,635,119. Therefore, Applicants respectfully submit that the attached terminal disclaimer disclaiming the terminal portion of the instant application that would extend to the expiration date of the full statutory term, as defined in U.S.C. 154 to 156 and 173 of U.S. Patent No. 6,653,119, overcomes the rejection thereto under the judicially created doctrine of obviousness-type double patenting.

Applicants respectfully submit that the filing of the terminal disclaimer is to obviate the rejection based on the judicially created doctrine obviousness-type double patenting and is

not an admission of the propriety of the rejection. See *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). Applicants further respectfully submit that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection." *Id.* at 874, 1394-95.

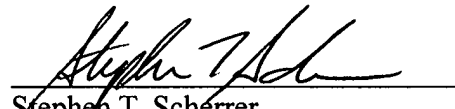
In view of the foregoing remarks and the attached terminal disclaimer, Applicants respectfully submit that all of the claims in the application are in allowable form and that the application is now in condition for allowance. Applicants further submit that neither further search nor consideration would be necessitated by entry of this response. Therefore, entry is proper and should be effected.

Respectfully submitted,

MCDERMOTT, WILL & EMERY

Date: October 23, 2003

MCDERMOTT, WILL & EMERY
227 West Monroe Street
Chicago, Illinois 60606-5096
Telephone: (312) 372-2000


Stephen T. Scherrer
Registration No. 45,080
Attorney for Applicants

CHI99 4193901-1.047440.0021